

Shall the President and Senators in Congress be  
Elected by a Direct Vote of the People ?

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## ADDRESS

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MR. PRESIDENT AND GENTLEMEN :

I have in the past heard much said on occasions like this of the duties of educated men in politics. The theories advanced were clearly sound, but general in character, and possibly difficult of specific application.

Let me, to-day, bring your attention to a concrete case. Two amendments to the Federal Constitution are proposed, providing for a direct vote of the people in the election of President and Senators in Congress.

The discussion of these proposed changes has already commenced and in the near future you will be called upon to render your verdict.

In the discussion thus far of these questions, the opposition to the proposed changes has developed two typical characters in debate, first, the blindly conservative man and, second, the dangerously indifferent man. Both represent classes that can be found in every community. Both can be found in the halls of legislation, on the press, and in every forum of debate where questions of public concern are considered. The conservative man maintains that the constitution is the work of "inspired men" and, moreover, is "a century old." Therefore esto perpetua. The indifferent man while conscious that faulty provisions exist, nevertheless quiets his convictions by the weakest possible justification, it "works well enough."

All agree that the organic law of any form of government should, when established, be preserved and conserved with a jealous care. A constitution, written or unwritten, is a law of guaranties. In monarchical states, where the scepter of power may fall into bad hands, protection is needed against the executive. In republican states protection is most needed against the legislature. This is the reason why in American constitutions, state and national, a veto has been given to the executive. This explains why it is that at the present time there is a marked tendency in the public



mind to incorporate into the fundamental law inhibitions which have hitherto been supposed to appertain to the domain of statutory law. Thus, in some states, prohibition of the liquor traffic has been embodied in the constitution. The new constitution of New York regulates the responsibility of stockholders in joint stock companies. In some of the new states in the West, codes of enactments, regulating rights which the legislature could, and in most states does control, are incorporated, in mass, in the new constitutions. All this demonstrates the fact that the people have become jealous of their legislatures.

But the amendments proposed for the election of the President and Senators cannot be brought within the range of any criticism that may be made of the tendency to confuse statutory and constitutional law. It is not proposed to introduce any new features, but merely to change the colorings of an existing one.

The conservative man, therefore, is not called upon to contemplate a radical remodeling of the structure of his magna charta; he is only asked to permit a change in the location of one of its doorways.

Obviously there is a marked difference between the grant of a sovereign power and the choice of an agent to administer such power.

So far as the constitution deals with the election of the President and Senators, the conservative man can approach the question of a change with a less halting step than in case of proposed changes of its substantial organic force. He may safely copy the conservatism of St. Paul, "Prove all things, hold fast that which is good," and if he is to hold fast that which being tested is good, he must let go that which is bad. Nor can intelligent men object to a change of the constitution in the minor matter of detail, on the ground that existing forms "work well enough" and therefore should be undisturbed. No provision of our organic law that is justified only on the ground that it works well enough can find any proper place in that law. All the provisions of the constitution should not only work in a way that is well enough, but in a way the best possible. If there be in the structure any weak timbers that may at any time bring on disaster, they should be replaced now without waiting to see how long they may work well.

But I deny that existing methods do work well enough, and I am supported in this denial by a large majority of the people in this country.

The states of Illinois, Louisiana, New York, Kentucky,

Kansas, Indiana, Wisconsin, Iowa, Idaho, California and Oregon have already in formal manner demanded that Senators be elected by a direct vote of the people. In their action every section of the country, and both of the great political parties, have spoken. A very large fraction of the public press in all parts of the country, and representing all political parties, has spoken in the same voice.

The national House of Representatives in the 52nd and again in the 53rd Congress, by a large majority and upon a proposed amendment in an objectionable form, passed a joint resolution in favor of this change. The amendment as it came before the House in both Congresses was coupled with a proposition to take away all supervisory power in Congress over the election of Senators, a power which manifestly would probably never be called into exercise, but one that should exist as a safeguard against a refusal to elect.

Without the presence of this feature, the joint resolution would have received the support of four-fifths of both the great political parties and five-fifths of the small one.

I am aware that here in Vermont we have little local interest in this question. The existing system has always worked well here. But Vermont is an exceptional state and always has been since January 16, 1777. Our representation in the Senate has always been and now is the best possible, and its personnel would be the same however we made our choice. Our unvarying rule always has been, in filling a vacancy, and alwas will be to sieze our lanterns like Diogenes and go out and search for a MAN.

But Vermont is jnst as much interested in the Senatorial representation of the other 43 states as she is in her own, and it is because of faulty elections in some of these sister states that this demand for a change has arisen. The function of a Senator is discharged not for the state electing him alone, but he legislates for the nation at large. The action of the Senators from Nevada, Delaware, or New York, has the same direct bearing upon Vermont interests as that of her own. Indeed, they are our own Senators to all practical intents and purposes, and hence it is that we in Vermont have the right to insist that the methods used in their election should be pure, and that the rights of the people should not be sacrificed to corporate wealth or political legerdemain. If we on our part furnish the best material, we have the right and we should be on the alert to provide a method by which other states can act up to the same standard.

The usual and indeed the only argument used against an amendment to the constitution that will enable the people to



elect Senators by a direct vote is the one already alluded to and which may be called the objection of the conservative. He opposes all proposed change whether it be structural or fundamental, whether it be functional or organic. He says the framers of the constitution were "inspired men," who crystalized all the wisdom of the ages in that sacred instrument, and that it is "altogether perfect," or, if not, near enough to perfection to work well.

He forgets, however, that these inspired men themselves did not regard their work as perfect, and that because of their own fallibility they carefully provided a scheme whereby needed amendments might be made, and that during the first century of its existence no less than fifteen distinct amendments, going to the very essence of the Federal system, have been made to this "altogether perfect" work of these "inspired men." Washington, Hamilton, Madison, Wilson, Gerry, Sherman and others, the leaders of thought in the convention, confessed to errors in the instrument, and never dreamed of the endorsement that the modern conservative gives to their labors.

Only two unchangeable provisions were incorporated into the constitution against which amendments were forever shut out. One was that the slave trade should not be forbidden before 1808, and the other that the equal representation of the states in the Senate should not be disturbed without the consent of the state interested.

He forgets, too, that these same inspired men were at loggerheads over the method to be adopted in the choice of Senators. Mr. Dickinson of Delaware, who proposed the method of election by the legislatures of the states, gave this as his reason for his proposal: "I wish the Senate to bear as strong a likeness as possible to the British House of Lords, and to consist of men distinguished for their rank in life and their weight of property. Such characters are more likely to be selected by the state legislatures than in any other mode."—Elliott, Debates 166. Many people to-day are convinced that the wish of Dickinson has been fulfilled in some respects to the letter.

Mr. Wilson of Pennsylvania, one of the most far-sighted men in the convention, favored an election by the people.

In this connection it must be remembered that in 1787 the framers of the constitution were starting out to put into concrete form a body of principles enunciated in the Declaration of Independence, which were a wide departure from nearly all existing models of government. A government of the people by the people under the restraints of a written constitu-

tion was unlike any scheme hitherto tried. They were equally averse to the evils of a pure democracy and a pure monarchy. They sought to establish a republic in which the political power should reside in the people, but that the people should be constituted a body politic of citizens, having common interests and invested by mutual compact with certain political rights. In other words, they would frame a government of the people regulated by a fundamental law. This was the conception of a republic which they had drawn from the works of Milton, Sidney, Harrington and Locke, the great oracles of republican liberty in the 17th century.

Hence it was that there existed a hesitation in submitting the choice of public officials to the people directly. Mr. Sherman of Connecticut, voiced this distrust when, in favoring the election of members of the House by the state legislature, he said, "The people immediately should have as little to do as may be about the government." Mr. Gerry of Massachusetts, expressed similar views. This sentiment was rife in all the states at this time. Indeed, in Vermont it was not until 1850, three-quarters of a century after our constitution was adopted, that it was deemed safe to trust the people with the election of a high bailiff or a justice of the peace, and we did not in our theory of a popular government mount to a level high enough to entrust the election of a Secretary of State and Auditor of Accounts to the people till within the past ten years.

But now all this distrust of the vox populi has departed and the surprise is that it ever existed.

Now it is safe to assume that a constitution is best which most nearly conforms in its structure to the theory of government which it is supposed to embody. Our theory is a popular government, a government by the people. The people are not, as Mr. Sherman declared, to be shut out of any immediate agency in the government, but on the contrary are to have both a mediate and controlling agency in its conduct. At the time the constitution was framed there was no evils of party politics to shun. There was then less danger in trusting elective methods to an electorate distinct from the people. Purity in elections was then expected to follow the methods provided. But we are now confronted with changed conditions which demand changed methods.

The great aim of any method should be purity in elections and that method is best which best secures it. The primary function of a state legislature is legislation for the people, not the choice of their officials, which is a matter foreign to the work delegated.



The public welfare demands its attention to the primary duty assigned to it, and when it acts as an intermediary for the filtration of the popular wish it is exercising an abnormal function. But the indifferent man declares that the present method works well enough. Is this true? First, no method works well enough which in any case does not work at all. During the last Congress three states were short in their representation in the Senate, by reason of the inability of their respective legislatures to make a choice. As already said, the other 43 states had a direct interest at stake in the election in each of these recusant states. The failure to elect was the direct fault of the method. In each case the people of those states would have made an election in sixty minutes. The plan does not work well enough. In Delaware weeks and months were lately wasted in a deadlock in the legislature over the attempted choice of a Senator, which the people would have settled in an hour, thus entailing vast expense upon the people of that state, and compelling serious neglect of proper matters of legislation, and in the end reaching a result that leads to grave doubt whether any choice has been made. The plan does not work well enough. Instances innumerable might be cited where practically the whole session of a legislature has been exhausted in fierce and unprofitable contests over the choice of a Senator, with utter neglect of proper legislative duties, and the conversion of a law-making body into a partisan mob. The plan does not work well enough.

There is a widespread public belief—whether right or wrong I do not affirm—that in repeated instances seats in the Senate have been gained by the lavish use of money by successful aspirants. It is important, nay it is absolutely necessary under our form of government that elections should be pure, and it is equally important that the people believe them to be pure. The moral effect is precisely the same in either case. Any plan that makes possible this distrust does not work well enough.

Mr. Justice Field of the Supreme Court, is quoted as saying that four-fifths of the wealth of the country is in the hands of corporations. It is easy to see what a vast influence this accumulation gives to corporate managers. Now it is a noticeable coincident that the heads of great corporate interests which are liable to be affected by Federal legislation are often successful candidates for Senatorial honors, and some of them—it is generally thought—have little qualification for such duties, save their accidental relationship to these great interests, and some of whom at least would have

never aspired to the place had the people a chance to make a choice. It is not by any means insisted that connection with corporate interests disqualifies a man for Senatorial honors, but it is insisted that the people of each state have the right to demand the election of men to this high office who will act for the public welfare rather than as the agents of any special local interest, and that any plan of election that makes possible the election of such men does not work well.

Again, no electorate should be provided that, by any chance, gives to a minority the choice of a Senator. Under the present legislative method just that faulty electorate is created. Take the case of Vermont, and I refer to this not by way of criticism but as a forcible example of the possibilities for wrong results that inhere in the existing method.

Our joint Assembly on full representation consists of 277 members; 139 votes constitute a majority; 139 small towns with 139 votes, and representing not over 33 per cent. of the votes can elect a Senator. Thus the will of two-thirds of the people may be overpowered by one-third. It is no answer to say that such a result is improbable. The constitutional possibility of such a result condemns the existing method. We have no right to expose the choice of our people to any chances of miscarriage.

Other states in their legislative system of representation are equally exposed to minority rule. The great debate in Illinois in 1858 between Lincoln and Douglass forcibly illustrates the danger of minority control, and equally demonstrates the security of popular elections. There the two candidates for the Senate made an active canvass of the state, and every member of the legislature elected was chosen upon the distinct ground of his fealty to one or the other of these candidates. This contest came the nearest to an election by the people of any campaign in our history. On the popular vote Lincoln had near 5,000 majority, but owing to the fact that a few Senators, under the Illinois constitution, held over, under a prior election, Douglass had a majority on joint ballot, and the expressed will of the people was denied for six years.

Surely, the plan does NOT work well.

Again, a somewhat popular species of grand larceny with the politicians of all parties in these days, known as the gerrymander, in many states has made the legislature the representative of a minority of the people, and secured thereby a Senator opposed by the majority. This, coupled with the fact that a majority of a legislature is actually



stolen in some instances leads forcibly to the conclusion that legislative elections do not work well.

Once more, every public official should be directly responsible to an existing constituency. The legislature electing a Senator often times passes out of office before the Senator begins his official term. To whom are Senators responsible? Not to the legislature electing them and at best to the people only constructively. On the other hand, if the people made the choice there is an ever existing constituency with which the Senator is closely allied, and to whom he acknowledges his continued responsibility.

But would an election by the people correct the evils mentioned? It certainly would, in most cases, and in the others would minimize them to the smallest degree.

Under a popular election, direct responsibility to the people is secured as already observed. Under this mode of election no Gerrymander could be possible. The people would vote on a general ticket unaffected by any juggling with the legislature.

Under this system all danger of minority control, as noticed in the Illinois and Vermont examples, would be effectually excluded.

Under this plan no corporation attorneys, holding briefs for their clients as their credentials, nor corporation managers, whose fitness for the place is established by their dexterity in watering stocks, could ever pass the eye of scrutiny that would be leveled upon them by the people.

Under this plan there will be no unrepresented states in the Senate, and the weeks and months of fruitless balloting well be avoided, and lastly this method brings our constitution more nearly in accord with the theory upon which our institutions are built. The change does not disturb the theoretical representation of states in the Senate, does not vary any delegated power given to a Senator. It merely alters a method by which he is chosen, and unless, like Mr. Dickinson, we desire to see a House of Lords in the Senate Chamber, the merits of the proposed amendments are easily demonstrated.

The political boss, so called, is one of the modern inventions brought forth in the evolution of political science. He is not altogether indigenous to American soil, nevertheless, his remarkable growth in the atmosphere of free institutions has attracted both the wonder and the indignation of patriotic men everywhere. He does not ply his arts in the ranks of the people at large, but confines his work mainly to the legislature of the states, and representative gatherings of the

people and in many of them he holds a sway more absolute than that of the Autocrat of Russia. In vain does the aroused and indignant manhood of a great city strive for better local government. The boss commands the legislature to defeat all measures calculated to attain that end, and the order is obeyed. What hope is there that any—the very best qualified man in either party—in the state of New York could be elected to the United States Senate, who did not wear the yoke of the “boss”? What man in this audience doubts that a single mind controls with an iron hand the legislature of that state, to-day, and could demand his own or dictate another’s election to the Senate at his own will and pleasure?

As patriotic men, as intelligent men, do you wish to perpetuate a system which, in the choice of national law-makers, not only denies to the people all voice, but stifles that of the legislature and determines the question of choice by the arbitrary will of one man?

But, you will say, could not the boss control 51 per cent. of a state convention as easily as 51 per cent. of a legislature? Not so easily, but possibly it might be done. In the legislature the boss pools the issues of the various members—all have their local and personal interests to serve and by yoking these interests together, the members themselves are yoked together. A state convention is differently constituted. There are no special local interests affecting its members. The chance therefore for combinations are greatly minimized. But suppose the convention is controlled by the boss, the game is not yet finished, the hardest obstacle of all is to be overcome, the people are the final arbitrators, their verdict is usually right.

I do not dare to affirm the fact, but many of you doubtless believe that the seats of certain Senators, to-day, are filled by incumbents who have reached them through the ways that are dark and the tricks that are vain of political bossdom, and who might never have seen the city of Washington had they awaited an invitation from the people to go.

Much that has been said respecting the election of Senators by the people applies to the question of electing the President in the same way. In this case, however, our conservative friend will have to revise his logic.

The electoral college as created by the framers of the constitution was intended to be a body of select men, commissioned to choose a President without consultation with, and with no responsibility to the people at large.

The theory was that the office was of such importance that the people should have no voice in filling it, but that del-



icate duty could be best discharged by appointing a select committee to do it for the people. Washington was twice chosen in accordance with the plan and the theory of the plan. No one else since his day has been chosen upon the original theory, but every one elected has been chosen in spite of it. The office of President is the most important in our political autonomy. His administration of public affairs touches most sensibly every nerve of our political body. His influence upon the public welfare, both in its domestic and foreign relationships, is more potent than that of a monarch. The question of his equipment for the office, his zeal, his temperament, his caution, his discretion, his judgment, his patriotism, and his honesty, is addressed to each individual citizen in the nation.

Why should I be compelled to intrust my answer to that question to the irresponsible keeping of some other man? Why should I be compelled to cast my ballot by proxy? Are the chosen electors of our state any more trusty, or better equipped, any more honest and patriotic than the average citizen of the state? As originally designed the electors were under no responsibility to the people for their choice. They are under none now except constructively; no legal control over their action exists, and they have become, in fact, a board of mere figureheads to announce the choice of the people. They play the part of a bulletin board to announce the result of the race.

Thus far the diagnosis shows them to be harmless, but if this consideration is the only defense that can be urged for a continuance of the system, its weakness as well as its dangers are confessed. The election of President means something more than the choice of an official. It carries with it a hundred thousand offices to be filled with a hundred thousand incumbents, more terrible in their power than an army with banners, and more hungry in their yearnings for place than the unfed lions of the jungle for food.

Civil service laws have done much to allay the yearnings of political appetites, but alas, human nature is still the attribute of the race and the millenium is strangely delayed.

Money, power, station and honor are involved in the struggle for preferment, and the fate of the majority is intrusted to the keeping of an irresponsible judge.

Who shall say that the vote of a single elector in the 44 states that may decide an acrimonious and hotly contested Presidential election, with all its possibilities and dangers, is a safe depository of our hopes as a free people? Who shall guarantee the honor of that single elector when con-

fronted with the millions of money that might be laid at his feet? If state legislatures can be stolen or debauched, what hinders the theft of an elector?

In 1876 both the great political parties acted upon the assumption that this danger was apparent. Both sought by every means to avert it. Both believed it possible of realization, and any system that makes it possible is defective, is radically wrong, is, in fact, the most alarming weakness that exists in our constitution. A revolution was averted in 1876 by the patriotic action of both parties. But that experiment can never be successfully repeated. Party spirit is growing more exacting, year by year. New phases of public opinion are being reflected. New theories of government are being developed. New warfare between labor and capital are being waged. Everything conspires to intensify party zeal and stupefy party honor. You may answer that the good sense of the American people can settle all conflicts. To this I agree, but the trouble is that under the present system, the good sense of the American people cannot be exerted. It is locked up in the conscience and honor of one man in a close contest, and he may, perchance, be the very man to surrender the key.

But the system is exposed to the danger that a minority of the people can elect a President. Indeed, in 1876 Mr. Tilden received 250,000 more votes of the people than Mr. Hayes and still was defeated in the electoral college. In 1888 President Harrison received 95,000 less votes than Mr. Cleveland on the popular vote, and was elected by a vote nearly two to one in the electoral college. In nearly every election the ratio of the popular vote to that of the electors for the respective candidates is strangely inconsistent with the theory of popular government.

If there be one danger more than another that imperils the success of our system of government, it is the indifference of the voters, that keeps them away from the polls, and thus exposes the control of public affairs to the vigilant but more dangerous element of the people.

Every inducement should be held out that will bring all good citizens into an active participation in political affairs. Now the method of electing the President keeps at home a large portion of the voters in all but the close states. New Hampshire and Vermont have practically the same population, practically the same voting strength; yet New Hampshire usually casts double the votes that Vermont does. The political result in Vermont is assumed in advance of the vote, hence thousands keep away from the polls, knowing that



some majority will be cast for the candidate for President of the dominant party, and that it is not important that this majority be large. If the majority in Vermont for A was 50,000, and this excess could be added to A's vote in New York in the tabulation of results, it might change the result in New York. But under the present system, whatever the majority in Vermont may be, it has no contributing force beyond state lines.

The present method makes the state instead of the nation the unit of voting strength in the choice of an official who exercises national powers and is clothed with national prerogatives, and is not in intent or function a representative of the states.

Thus the accepted theory of our government, to-day, that our constitution is the text of a compact rather than a confederation; that we are a unit, not an aggregate; that we are a nation, not a combination, is refuted by this illogical and long since condemned method of choosing our national chief magistrate.

As educated men invested with the privileges and charged with the duties of a citizenship that embodies all the sovereign power of a great nation, it is your mission to lead and instruct, not to follow and fawn.

Constitutional law, like statutory law, is an evolution. Mackintosh says, "Constitutions grow, they are not made." As the wants of society expand, as the need of reform is developed, as the conservation of popular rights is demanded, changes must take place. This is especially true in a government like ours, founded upon the consent of the governed.

Intelligent men, therefore, are confronted with fields of inquiry which must be entered and tilled. They are compelled to prove all things. That their investigations should proceed along conservative lines is the sure law of their progress. Conservatism has saved the world from countless blunders that followed in the wake of progress, but it is a discriminating conservatism, not a blind bigotry, that conduces to the happiness and well-being of man. "A conservative," says Douglass Jerrold, "is a man who will not look at the new moon out of respect for that ancient institution, the old one."

If you wish for a government of the people by a minority of the people, and for the minority, keep to the existing methods. If you desire a government of the people by bossdom, and for the boss, stand by existing methods. If you

prefer a government of the people by bargain and sale, and for the highest bidder, perpetuate existing methods. But if you seek a government of the people, by the people, and for the people, then give control to the people.